IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 476 of 1995

in

SPECIAL CIVIL APPLICATION No. 2463 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and

MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES No

5. Whether it is to be circulated to the Civil Judge? No :

RAMIBEN WD/O MAGANJI GOVINDJI

Versus

COMPETENT OFFICER

Appearance:

MR AJ PATEL for Appellants

MRS SIDHDHI TALATI for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/12/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

By means of filing this appeal under Clause 15 of the Letters Patent, the appellants who are heirs and legal representatives of Maganji Govindji, have challenged legality of judgment dated May 1, 1992 rendered by the learned Single Judge, in Special Civil Application No.2463/90, by which order dated April 5, 1988 passed by the Competent Authority and Deputy Collector, Urban Land Ceiling, Surat declaring 6088 sq.mts. of lands as excess land under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 as affirmed by order dated July 5, 1989 passed by the Urban Land Ceiling Tribunal in Appeal No. 51/88 is upheld.

2. The appellants are heirs and legal representatives of deceased Maganji Govindji. The deceased was holding lands bearing survey no.68 admeasuring 4654 sq.mts. and survey no.73 admeasuring 3734 sq.mts. situated in the sim of village Jahangirabad, Taluka : Choryasi, District : Surat. On coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 ("the Act" for short), the deceased filed a statement under section 6(1) of the Act before the Competent Authority specifying the location, extent, value of vacant lands held by him. The form was processed by the Competent Authority and the Competent Authority by order dated January 9, 1984 held that the deceased was holding 6088 sq.mts. as excess land. Feeling aggrieved by the said order, the deceased preferred Ceiling Appeal No.478/84 before the Urban Land Ceiling Tribunal, Ahmedabad. During the pendency of the appeal before the Tribunal, original owner of the lands in question i.e. Maganji Govindji expired on February 4, 1986. The present appellants were brought on record of the appeal as heirs and legal representatives of the deceased. The Tribunal allowed the appeal by judgment dated September 8, 1987 and remanded the matter to the Competent Authority with a direction to decide the matter afresh after giving opportunity of being heard to the appellants. Though the matter was remanded to the Competent Authority, a finding was recorded by the Urban Land Ceiling Tribunal to the effect that the appellants were entitled to only one unit under the provisions of the Act. Pursuant to order of remand passed by the Urban Land Ceiling Tribunal in Appeal No.478/84, the Competent Authority held inquiry again and gave opportunity of being heard to the appellants. However, the Competent

Authority by an order dated April 5, 1988 held that the appellants were entitled to only one unit and declared 6088 sq.mts. of land as excess land. Feeling aggrieved by the above-referred to order of Competent Authority, the appellants preferred Appeal No. 51/88 before Urban Land Ceiling Tribunal. During the pendency of the appeal before Urban Land Ceiling Tribunal, the appellants instituted Special Civil Application No.3903/88 and challenged the finding recorded by the Urband Land Ceiling Tribunal in Appeal No.478/84 to the effect that the appellants were entitled to only one unit. The High Court by order dated April 6, 1989 rejected the petition at the admission stage and directed the Urban Land Ceiling Tribunal to decide appeal on merits after considering all the facts. The Urban Land Ceiling Tribunal accordingly considered Appeal No.51/88 and dismissed the same by judgment and order dated May 3, 1988. The order passed by the Competent Authority on April 5, 1988 and the judgment rendered by the Urban Land Ceiling Tribunal on July 5, 1990 were challenged by the petitioners in Special Civil Application No. 2463/90 on several grounds. On behalf of the appellants, two contentions were urged before the learned Single Judge viz. (i) as the lands held by deceased Maganji Govindji were H.U.F. properties and not his self-acquired properties, the impugned orders were liable to be set aside, and (ii) as heirs and legal representatives of deceased Maganji Govindji were entitled to file statement before the Competent Authority under section 15(1) of the Act, Urban Land Ceiling Tribunal was not right in holding that the appellants were entitled to one unit under the Act. The learned Single Judge did not find merit in any of the submissions advanced on behalf of the appellants and, therefore, dismissed the petition by judgment dated May 1, 1992, giving rise to the present appeal.

3. During the pendency of the appeal, draft amendment was moved by the appellants seeking permission of the Court to amend the memorandum of Letters Patent Appeal. Draft amendment was allowed by the Court and the appellants were permitted to amend memorandum of Letters Patent Appeal. By amendment, the appellants contended that survey nos. 68 & 73 of village Jahangirabad, Taluka : Choryasi were agricultural lands and as zoning certificate dated July 21, 1998 shows that those survey numbers were included in residential zone of Surat Urban Development Authority ('SUDA') with effect from January 31, 1986, the provisions of the Act were not applicable to the lands in question and 6088 sq.mts. of land could not be declared as excess land. In order to substantiate the claim advanced by way of amendment, the appellants

have produced zoning certificate dated July 21, 1998 as well as village form 7 & 12 for the period from 1985 to 1988.

4. We may state that Civil Application No.1627/95 was filed in Letters Patent Appeal No.476/95 by the appellants seeking stay of execution, operation and implementation of the order dated April 5, 1988 passed by the Competent Authority by which lands admeasuring 6088 sq.mts. were declared to be excess land as well as judgment dated July 5, 1989 passed by the Urban Land Ceiling Tribunal by which order of the Competent Authority was upheld.

5. On behalf of the appellants, a note dated July 9, 1999 was addressed to the Registrar, High Court stating that possession of the lands in question was not taken over either by the Government or by the Competent Authority and as the appeal has abated in terms of The Urban Land (Ceiling and Regulation) Repeal Act, 1999, the matter should be placed before the Court for appropriate orders. On service of note, Mr. Maganbhai B.Patel, Competent Authority and Additional Collector (ULC), Surat filed an affidavit on December 1, 1999 asserting that possession of the lands in question was taken over by the Government on May 31, 1993 pursuant to notice dated March 12, 1993 issued under section 10(5) of the Act and, therefore, the appeal should not be disposed of as having abated. The appeal was taken-up for hearing by this bench on December 9, 1999 and as the appellants wanted to place certain facts before the Court, an opportunity was given to them by adjourning the matter. Thereafter an affidavit in support dated December 20, 1999 was filed by the appellants stating that the lands of village Jahangirabad were included within the limits of Surat Municipal Corporation with effect from April 1, 1986. Along with the affidavit, map of Surat City was also produced to show that the area of village Jahangirabad was included within the limits of City of Surat in the year 1986. Mr. Maganbhai B.Patel, Competent Authority and Additional Collector (ULC) Surat has filed affidavit-in-rejoinder dated December 24, 1999 controverting the averments made by the appellants in affidavit-in-support. In the rejoinder it is emphasised that the lands of the appellants situated in Jahangirabad were included in Master Plan from the very beginning and as such the lands are not entitled to exemption under the Act. A further affidavit dated December 28, 1999 is filed by Mr. H.G.Naik, Deputy Mamlatdar discharging duties in the Office of Additional Collector, ULC, Surat stating that Master Plan for Surat Urban Agglomeration

was prepared on August 9, 1976 and therein survey nos. 68 & 73 belonging to the appellants were shown within the residential zone. Along with his affidavit, Mr. Nayak has also produced extract of the Master Plan and copies of Village Form No.7 and 12 relating to the lands in dispute. It is worthwhile to note that neither the contents of affidavit-in-sur-rejoinder dated December 24, 1999 filed by Mr. Maganbhai B.Patel, Competent Authority and Additional Collector (ULC), Surat, nor the contents of affidavit filed by Mr. H.G.Naik, Deputy Mamlatdar discharging duties in the Officer of Additional Collector, ULC, Surat are either controverted or disputed by the present appellants.

6. Mr. A.J.Patel, learned Counsel for the appellants has not urged any of the grounds which were canvassed on behalf of the appellants before the learned Single Judge. What was pleaded by the learned Counsel for the appellants was that two survey numbers were mainly used for the purpose of agriculture and, therefore, they could not have been regarded as 'urban land' within the meaning of section 2(o)(ii) of the Act. It was claimed that the lands in question which are situated in village Jahangirabad were not brought within the limits of Surat Urban Agglomeration nor referred to as such in the Master Plan on the appointed day and as the lands could not have been regarded as 'urban land' within the meaning of section 2(o)(i) of the Act, the appeal should be allowed.

7. Mrs. Sidhdhi Talati, learned A.G.P. submitted that no reliable evidence has been produced by the appellants to show that the lands in question were mainly used for the purpose of agriculture and, therefore, as lands are covered within the definition of 'urban land' as provided in section 2(o)(ii) of the Act, the appeal should be dismissed. It was contended that survey nos. 68 & 73 of village Jahangirabad were included in the Master Plan of Surat Urban Agglomeration on August 7, 1976 and, therefore, the provisions of the Act would be applicable to the lands in question.

8. We have heard the learned Counsel for the parties at length. We have also taken into consideration the documents which are brought on record of the petition, Letters Patent Appeal as well as those which were brought to our notice during the hearing of the appeal. In our view, it is not necessary to decide the question whether the provisions of the Act would be applicable to the lands in question because of their inclusion in the Master Plan for Surat Urban Agglomeration on August 7,

1976 because we are of the view that no sufficient material has been produced by the appellants to establish that the lands were mainly used for the purpose of agriculture. Mr. H.G.Naik, Deputy Mamlatdar working in the Office of Additional Collector, ULC, Surat, has produced revenue record pertaining to survey Nos.68 & 73 of village Jahangirabad for the year 1975-76 alongwith his affidavit. Extract of Village Form No. 7 & 12 pertaining to survey no.73 shows that the total measurement of the land is 0 Hector, 29 Are & 34 sq.mts. and grass was being raised on the land. The revenue record pertaining to survey no.73 does not indicate in any manner that the said land was used for the purpose of agriculture at all. So far as survey no.68 is concerned, Village Form No.7 & 12 indicates that total measurement of the land is 0 Hector, 46 Are & 54 sq.mts. As mentioned in the said record, in the year 1975-76 'val', which is a kind of pulse was being grown on the lands. However, it is also indicated in the said record that the land was kept fallow and not cultivated at all. The appellants have not led any evidence to establish that major portion of survey no.68 was used for the purpose of growing 'val'. When the revenue record mentions that the land was kept fellow, it means that the whole survey number was never used for the purpose of agriculture. If the Village Form 7 & 12 pertaining to survey no.68 is minutely examined, it becomes clear at once that survey no.68 is not an irrigated land because had it been irrigated land, it would have been mentioned in the relevant column of the said record that the water was made available for irrigation either from well or from canal passing nearby or from any other source. The appellants have not mentioned anywhere as to what was the yield i.e. quantity of pulse which was being grown in survey no.68 of village Jahangirabad. If all these circumstances are taken into consideration cumulatively, the net result would be that survey no.68 was never mainly used for the purpose of agriculture. As far as survey no.73 of village Jahangirabad is concerned, revenue record unequivocally mentions that grass was being raised therein. It does not indicate that any other agricultural produce was being raised in the said survey number. The Explanation appended to section 2(o)(ii) of the Act provides that for the purpose of clause 2(o) and clause 2(q), 'agriculture' does not include raising of grass. In view of this statutory provision, raising of grass in survey no.73 cannot be regarded as land being used for the purpose of agriculture. Thus, the appellants have failed to establish that either survey no.68 or survey no.73 of village Jahangirabad was mainly used for the purpose of

agriculture. At this stage, decision of the Supreme Court in State of U.P. vs. Nand Kumar Aggarwal and others, AIR 1998 S.C. 473 can be referred to with advantage. In that case, after enforcement of the Act on February 17, 1976 a statement under section 6(1) of the Act was filed by the respondent no.1 giving details of his property. One such property was land measuring 16 Bighas 1 Biswa 7 Biswansis in village Para. On scrutiny of the form submitted by respondent no.1, draft statement was sent to respondent no.1, wherein land in village Para was shown as agricultural land. However, the Competent Authority had proposed this land to be surplus land after applying the parameters fixed under the Act. Against that order of Competent Authority, an appeal was filed before the District Judge, Lucknow under section 33 of the Act, who dismissed the same. Feeling aggrieved, a writ petition inthe High Court of Allahabad was filed by respondent no.1. High Court allowed the writ petition holding that agricultural land comprised in village Para falling within the boundary of Lucknow Mahapalika was exempt under the Act. The decision of the High Court was challenged before the Supreme Court. The Supreme Court considered the question whether the land in village Para was used mainly for agricultural purpose at the relevant time being the date when the Act came into force. To answer this question, the Supreme Court referred to various definitions as contained in section 2 of the Act. The Supreme Court noticed that respondent no.1 in his affidavit dated August 13, 1976 filed before the Secretary, Local Self-Government, Lucknow had stated that he was doing brick-kiln business and had his 'bhatta' at village Para, Tehsil and District : Lucknow and that brick-kiln was covering the area of 16 Bighas 1 Biswa 7 Biswansis. In the Master Plan, the area in question was shown as 'agriculture'. As in this case, the Supreme Court found that the area in question was falling within the urban agglomeration, as it was situated within the peripheral area of Municipal Corporation of Lucknow. The Supreme Court noted that land in question would not be urban land if though situated within the limits of urban agglomeration was mainly used for the purpose of agriculture. While allowing the appeal of the State of U.P., the Supreme Court has held as under in Para-6 of the reported decision.

"In the master plan the area in question is no doubt shown as agriculture. If we refer to the Schedule mentioned in the definition of urban agglomeration,it could be seen that area in question falls within urban agglomeration as it is situated within the peripheral area of the

Municipal Corporation of Lucknow (Lucknow Nagar Mahapalika). The land in question will not be urban land if though situated within the limits of an urban agglomeration, it is mainly used for the purpose of agriculture. Operating of a Bhatta cannot certainly be an agriculture purpose. Mr. Rohtagi, learned counsel for the 1st respondent submitted that Explanation to clause (o) shows as what is not included in agriculture and since Bhatta is not one of the entires therein it would mean that operating Bhatta would be an agriculture purpose. We do not find any substance in the submission. It is correct that the land in question is entered in the revenue record but at the same time the record shows that the land is being used for Bhatta. The foremost question is : if the land in question though agricultural was being mainly used for the purpose of agriculture on the appointed day ? Seeing the definitions as set out above and the affidavit of the 1st respondent dated August 13, 1976,the answer is obvious that the land in question is not being mainly used for the purpose of agriculture. Agriculture under the Explanation to clause (o) has limited meaning. It includes horticulture but does not include cultivation of every type of vegetation or rearing of animals or birds. That apart to hold that land is mainly used for the purpose of agriculture, it is not enough even if the land is entered in the revenue records before the appointed day used for the purpose of agriculture or even if so entered the master plan gives purpose of the land other than agriculture. In the present case though (B) and (C) to the Explanation are satisfied but (A) is not as the purpose to which the land, though agriculture and so entered in the revenue records, was being used for running of brick-kiln. High Court was not, therefore, correct in holding that the land was being mainly used for the purpose of agriculture merely on the strength of the purpose in master plan which is specified as agriculture (Krishi Bhumi) and that the land is entered in the revenue records. High Court has wrongly applied Explanation B to clause (o) of S.2 of the Act. Simply because land is entered in the revenue record would not mean that it is being used mainly for the purpose of agriculture. Here the land is mainly used for the purpose of brick kiln business of the 1st respondent. It is not

material if a small portion of the land was being used for the purpose of agriculture as well."

From the above quoted para, it becomes clear that even if land is entered into revenue record as agricultural land, actual use of it has to be seen for the purpose of finding out whether the land in question, though agricultural, is being mainly used for the purpose of agriculture on the appointed day. As noted by the Supreme Court, agriculture under Explanation to clause (o) has limited meaning. Though it includes horticulture, it does not include cultivation of every type of vegetation or rearing of animals or birds. To hold that the land is mainly used for the purpose of agriculture, it is not enough even if the land is entered in the revenue records before the appointed day as being used for the purpose of agriculture or even if so entered the master plan gives purpose of the land other than agriculture. Applying the principles laid down by the Supreme Court in the above-referred to decision to the facts of present case, we are of the opinion that no sufficient evidence is adduced by the appellants to establish that the lands in question were mainly used for the purpose of agriculture. We may now notice the definition of 'urban land' as given in section 2(o)(ii), which is as under :-

"urban land' means - in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called), a notified area committee , a town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture."

A bare reading of the above-referred to provision makes it manifest that in a case where there is no master plan, any land within the limits of urban agglomeration and situated in any area included within the local limits of a municipality by whatever name called and which is not mainly used for the purpose of agriculture, will have

to be regarded as 'urban land'. An Urban Agglomeration is made-up of main town together with the adjoining areas of urban growth and is treated as one urban spread. The population covered by such spreads is categorised as urban. Each such agglomeration may be made-up of more than one town adjoining one another, such as municipality and the adjoining cantonment etc. and also other urban growths such as a railway colony, university campus etc. Such outgrowth which did not qualify to be treated as individual towns in their own right and have pronounced urban characteristics are shown as constituents of the agglomeration in Schedule-I to the Act. Item no.4 in the Schedule to the Act deals with Gujarat and at serial no.6 therein, it is mentioned that Surat Urban Agglomeratioin consists of (a) Surat Municipal Corporation, (c) Udhana V.P., (c) Katargam V.P. and also includes peripheral area of 5 Kms. It is not in dispute that village Jahangirabad is within 5 Kms. of Surat Municipal Corporation and, therefore, in our view survey nos. 68 & 73 of village Jahangirabad which belong to the appellants, were within the limits of Surat Urban Agglomeratioin as defined under the Act. The lands in question fall within Surat Urban Agglomeration, as they are situated within the peripheral area of Surat Municipal Corporation. Earlier, we have concluded that the lands were never mainly used for the purpose of agriculture and, therefore, the lands will have to be regarded as 'urban land' within the meaning of section 2(o)(ii) of the Act for the purpose of application of the Act.

9. It is not the case of the appellants that they were not heard either by the Competent Authority or by the Urban Land Ceiling Tribunal before passing the impugned orders. Though before the Competent Authority several points such as (i) mother and sister should get equal share, (ii) that there was partition in the year 1971, (iii) that all the appellants were major on the date of filing of statement under section 6(1) of the Act etc. were raised, those points are not argued by the learned Counsel for the appellants before us. It is not the case of the appellants that the finding of the Competent Authority as confirmed by the Urban Land Ceiling Tribunal to the effect that 6088 sq.mts. of land would be excess, if the provisions of the Act are applicable, is erroneous in any manner. Under the circumstances, we are of the opinion that the appeal cannot be allowed and is liable to be dismissed.

For the foregoing reasons, we do not find substance in the appeal. The appeal, therefore, fails

and is dismissed, with no orders as to costs.

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(patel)